No. 80-1383

MAR 14 1981
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MURRAY W. (DUSTY) MILLER,
Petitioner,

Vs.

TRANSAMERICAN PRESS, INC.,
TRANSAMERICAN PRESS OF TEXAS, INC.,
AND MIKE PARKHURST,
Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CROSS-RESPONDENTS' BRIEF IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the Court of Appeals err in holding that Cross-Petitioner was a public figure when he was the General Secretary-Treasurer of the International Brotherhood of Teamsters and a director of the Southern Conference of Teamsters at the time the allegedly libelous article commenting on his activities in those positions and as a trustee of the Central States Pension Fund was published?

LIST OF PARTIES

1. Transamerican Press, Inc., a California corporation with its principal place of business in California.*

2. Michael Parkhurst.

3. Murray W. (Dusty) Miller.

4. Although not a party, the reporter, Jim Drinkhall, has an interest in this litigation.

5. Although not a party, the International Brotherhood of Teamsters may have an interest in this litigation.

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*In compliance with Rule 28.1 of the Court's Rules of Practice it is hereby certified that Transamerican Press, Inc. is neither the parent nor the subsidiary of any other corporation. Transamerican Press of Texas, Inc. is not a party to this proceeding although it was erroneously listed as an appellant in the court below. Transamerican Press of Texas, Inc. was granted a summary judgment in its favor prior to the interlocutory appeal involved herein. To cross-respondents' knowledge Transamerican Press of Texas, Inc. is neither the parent nor the subsidiary of any other corporation.

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The cross-respondents, Transamerican Press, Inc., and Mike Parkhurst, respectfully request that this court deny the Cross-Petition for Writ of Certiorari seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 621 F.2d 721.

JURISDICTION

Cross-Respondents agree that the Court has jurisdiction over this petition.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

REASON FOR DENYING THE WRIT

THE CROSS-PETITIONER HAS NOT INVOKED ANY OF THE CONSIDERATIONS GOVERNING SUPREME COURT REVIEW ON CERTIORARI AS SPECIFIED IN SUPREME COURT RULE 17.

In his original complaint filed with the District Court in this case the Cross-Petitioner describes himself as "General Secretary-Treasurer of the International Brotherhood of Teamsters, a Labor Union with approximately two million (2,000,000), members in every state in the Union and certain foreign countries and possessions and protectorates of the United States, such office being an elective office held at the pleasure of the membership." Furthermore, the Cross-Petition for Writ of Certiorari indicates that at the time of the allegedly libelous article Cross-Petitioner was a director of the Southern Conference of Teamsters. He was also a trustee of the Central States Pension Fund, as is indicated by the Cross-Petition for Writ of Certiorari. The Cross-Petitioner does not contend that the Fifth Circuit's holding that he is a public figure conflicts with the decision of any other circuit. Similarly, the Cross-Petitioner does not contend that the Fifth Circuit's holding conflicts with this Court's seminal public figure case of *Curtis Publishing Company v. Butts*, 388 U.S. 130 (1967).

The Cross-Petitioner could hardly contend that the issue of public figure is a case of first impression with this Court. As recently as 1979, the Court decided two cases involving the definition of "public figure." See *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S.Ct. 2675 (1979) and *Wolston v. Reader's Digest Association*, 99 S.Ct. 2701 (1979). The facts of those cases could not be farther removed from the situation presented by the instant petition.

The Fifth Circuit correctly noted that the article in question commented directly upon the performance of Cross-Petitioner with a labor union that has enormous influence over the American economy. At the time of Publication Cross-Petitioner was the second highest ranking officer in the Teamsters organization. The Cross-Petitioner contrasts sharply with Wolston who, sixteen years prior to publication of the complained of material, pled guilty to contempt for non-appearance before a Grand Jury investigating espionage activity. Cross-Petitioner likewise bears no resemblance to the research behavioral scientist at the Kalamazoo State Mental Hospital who brought suit against Senator Proxmire. Finally, the Central States Pension Fund and the International Brotherhood of Teamsters, about which the article in question here commented, certainly are subjects of national importance as contrasted to the divorce of Mary and Russell Firestone which was the subject of the article at issue in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976) cited by Cross-Petitioner.

Furthermore, Cross-Petitioner argued to the Court of Appeals that his evidentiary burden at trial was to show "actual malice." He contended that the lower court's ruling that Cross-Respondents' confidential news sources should be revealed was mandated by the onerous "actual malice" evidentiary standard. In Texas and California, on the issue of liability in a libel case, only public figures and public officials must show actual malice.

The Fifth Circuit *expressly* held that Cross-Petitioner was entitled to learn the identity of the confidential news sources because "Miller is a public figure (and) he must prove Transamerican acted with malice when it published the article." 621 F.2d at 724.

The Cross-Petitioner now wants to have his cake and eat it too by arguing that the source disclosure ruling should be upheld, but that the fact it is predicated upon should be reversed.

CONCLUSION

For these reasons the Cross-Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition to Cross-Petition for Writ of Certiorari have been sent by certified mail first class postage prepaid on the 13th day of March, 1981 to Mr. Otto Mullinax, counsel of record for respondent located at 8204 Elmbrook Drive, Suite 200, Dallas, Texas 75247; and to Gardere & Wynne (formerly Wynne, Jaffe & Tinsley) counsel of record for Transamerican Press of Texas, Inc. located at 1500 Diamond Shamrock Tower, Dallas, Texas 75201 c/o Joe Harrison.

/s/Charles Lynde Babcock, IV

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